REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application. Claims 7-11 are now present in this application. No new matter has been added by way of the present amendment. For instance, claim 8 has been amended to comply with the requirements of 35 U.S.C. §112, first paragraph, and in accordance with the Examiner's suggestion on page 2 of the outstanding Office Action. Newly added claim 9 is supported by Example 2 of the Specification as well as the disclosure on page 8, lines 10-11. It is noted that Example 2 is directed to an aqueous solution containing zinc nitrate hexahydrate having a concentration of 150 g/L, which corresponds to an aqueous solution containing zinc nitrate having a concentration of 95.52 g/L (150g/L * 63.68%). Similarly, newly added claim 10 finds supports at page 5, lines 5-11. Newly added claim 11 finds support at page 10, lines 9-15. Accordingly, no new matter has been added.

In view of the amendments and remarks herein, Applicants respectfully request that the Examiner withdraw all outstanding rejections and allow the currently pending claims.

Issues Under 35 U.S.C. §112, first paragraph

Claims 7 and 8 stand rejected under 35 U.S.C. §112, 1st paragraph, as failing to comply with the written description requirement. This rejection is respectfully traversed.

The Examiner asserts that the range limitation "from 63 g/L to 200 g/L" is not disclosed in Applicants' Specification. The Examiner suggests that the lower limit be amended to 63.68 g/L (based on Applicants' remarks of July 24, 2006). The Examiner further asserts that the upper limit of 200 g/L is not found in the Specification.

The Examiners attention is directed to Applicants' Specification at page 9, lines 9 to 14, where an upper limit of 200 g/L is explicitly disclosed. Furthermore, Applicants have amended claim 7 to recite a lower limit of 63.68 g/L, in accordance with the Examiner's helpful suggestion. Accordingly, this rejection is moot.

Reconsideration and withdrawal thereof are respectfully requested.

Issues Under 35 U.S.C. § 103(a)

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis et al. (U.S. 5,350,423) (hereinafter Davis '423). This rejection is respectfully traversed.

The Examiner asserts that Davis '423 teaches a processing method for an indigo-dyed fabric comprising the steps of applying zinc nitrate or ammonium nitrate in the form of an aqueous solution and subjecting the resulting fabric to a heating process by drying in a tenter oven at 300°C. The Examiner further asserts that the immersion step in Davis '423 is equivalent to the coating step of the instant invention, and states that it would have been obvious to a skilled artisan to optimize the quantities to arrive at the concentrations of the present invention. Furthermore, the Examiner asserts that Davis '423 teaches the addition of starch, which is equivalent to the thickener of the instant invention, and submits that it would have been obvious to modify the concentration of the thickener because the ranges are "close enough" to Applicants' disclosed concentrations.

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to

combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Davis '423 discloses zinc nitrate in pad bath concentrations of 0.5 to 6.0%, preferably 0.7 to 2%, the equivalent of **7 to 20 g/L** (emphasis added) (see Example 3 and col. 6, lines 49-54). In stark contrast, the present invention is directed to an aqueous solution comprising zinc nitrate or ammonium nitrate at a concentration of **63.68g/L to 200 g/L** (emphasis added). The preferred zinc nitrate or ammonium nitrate concentration of the present invention is in the range of **63.68 g/L to 95.52 g/L** (emphasis added). Clearly, the concentration of the inventive solution of the present invention does not overlap with that disclosed by Davis '423. Furthermore, these concentrations are not "close enough" so as to render a modification of Davis '423 *prima facie* obvious. Evidently, Davis '423 fails to teach or suggest all the limitations of the present invention. For this reason alone, this rejection is improper and should be withdrawn.

Furthermore, one skilled in the art would not have any motivation to modify the teachings of Davis '423 in an attempt to arrive at the instant invention, absent hindsight gleaned from Applicants' disclosure. Davis '423 is directed to a method of **reducing or eliminating** (emphasis added) yellowing on denim fabrics. In stark contrast, Applicants' invention is directed to a method of **obtaining a vintage color with a yellowish tone** (emphasis added). Davis '423 is concerned with the reduction of stonewashing time and related expenses, by embrittling the fibers of a cloth.

Additionally, one of ordinary skill in the art would not have any expectation of success by modifying the teachings of Davis '423. Davis '423 actually teaches away from the present invention, by noting that the preferred embodiments provide "the most effective overall performance **with minimum yellowing of the fibers"** (emphasis added). Clearly, one skilled in the art, when faced with the teachings of Davis '423, would have shunned away from making the modification proposed by the Examiner. The Examiner's combination should be considered improper, since a reference must be considered for all that is taught, including disclosures that diverge and teach away from the invention at hand. *In re Dow Chem. Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988); *Akzo N.V. v. United States ITC*, 808 F.2d 1471, 1 USPQ2d 1241 (Fed. Cir. 1986); *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1 USPQ2d 1593 (Fed. Cir. 1987); *Ashland Oil, Inc. v. Delta Resins & Refracs., Inc.* 776 F.2d 281, 227 USPQ 657 (Fed. Cir. 1985).

Because Davis '423 does not teach or suggest all the limitations of the present invention and, furthermore, because there is no motivation to modify this reference, it is respectfully submitted that this reference fails to render the present invention obvious.

Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and objections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gerald M. Murphy, Jr., Reg. No. 28,977 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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